

**REMARKS**

Applicants have carefully considered this Application in connection with the Examiner's Action, and respectfully request reconsideration of this Application in view of the following remarks.

Pending in this application are Claims 1 – 24 and 48 – 71.

Claims 1 and 48 have been amended to recite that the shelf-stable food product has a moisture content of at least 38.25. Support for this amendment can be found in the specification in Table 1, in the "Extruder Discharge Moisture" row for RUN #1. This entry shows that the moisture content for the food product is 38.25.

**I. Rejections Under 35 U.S.C. §102(b)**

**A. U.S. Patent No. 5,695,801 to Oh**

Claims 1, 4 – 6, 8 – 13, 15 – 17, 20, 24, 48, 51 – 53, 55 – 60, 62 – 64, and 71 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,695,801 to Oh ("Oh"). The Examiner has asserted that Oh discloses a non-aseptically packaged partially cooked pasta having a water activity of 0.82 – 0.84. Applicant respectfully asserts that Oh does not disclose the claimed subject matter.

In particular, Oh does not disclose a shelf-stable food product having a moisture content of at least 38.25, as the amended claims recite. Oh discloses, at the most, a moisture content of 38%. See Oh, Col. 2, line 21. The pasta of Oh therefore has a lower moisture content than the food product of the current claims. Furthermore, Oh teaches the necessity of a pasteurization step that the current claims do not require. See Oh, Col. 4, lines 38 – 39.

For these reasons, Claims 1, 4 – 6, 8 – 13, 15 – 17, 20, 24, 48, 51 – 53, 55 – 60, 62 – 64, and 71 are patentable over Oh.

**B. U.S. Patent No. 6,428,835 to Debbouz et al.**

Claims 1, 4 – 6, 8 – 11, 13, 14, 17, 20, 22 – 24, 51 – 53, 55 – 58, 60, 61, 64, 67, and 69 – 71 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,428,835 to Debbouz et al. ("Debbouz"). The Examiner asserts that Debbouz discloses a non-aseptically

packaged partially cooked pasta having a water activity of 0.5 – 0.85. Applicant respectfully asserts that Debbouz does not disclose the claimed subject matter.

In particular, Debbouz discloses shelf-stable filled pasta having dough with a moisture content of between 29 percent and 36 percent. See Debbouz, Col. 3, lines 12 – 13. This is lower than the moisture content of the current claims, which must be at least 38.25. Debbouz also teaches the necessity of a pasteurization step. See Debbouz, Col. 2, lines 23 – 25. The claimed subject matter does not require pasteurization.

For these reasons, Claims 1, 4 – 6, 8 – 11, 13, 14, 17, 20, 22 – 24, 51 – 53, 55 – 58, 60, 61, 64, 67, and 69 – 71 are patentable over Debbouz.

C. U.S. Patent No. 6,444,244 to West et al.

Claims 1, 4, 6 – 8, 10, 11, 17, 20, 22 – 24, 48, 51, 53 – 55, 57, 58, 64, 67, and 69 – 71 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,444,244 to West et al. (“West”). The Examiner asserts that West discloses a cooked pretzel with a water activity of 0.85 that is packaged non-aseptically. Applicant respectfully asserts that West does not disclose the claimed subject matter.

West discloses that it is preferable to lower the moisture content of its shelf-stable soft pretzel to 25% to 35%. See West, Col. 4, lines 47 – 49. Thus, West discloses a moisture content that is lower than the moisture content of the claimed subject matter. In addition, West only pertains to lowering the pH on the surface of the pretzel, see Col. 4, lines 57 – 67, and mentions nothing about shelf-stable food products that have a particular pH in the interior of the product. The current claims do not distinguish between the surface or the interior of the product when defining the pH.

For these reasons, Claims 1, 4, 6 – 8, 10, 11, 17, 20, 22 – 24, 48, 51, 53 – 55, 57, 58, 64, 67, and 69 – 71 are patentable over West.

D. U.S. Patent No. 6,132,786 to Poulos et al.

Claims 1, 4 – 8, 10, 15 – 18, 20, 21, 23, 48, 51 – 55, 57, 62 – 65, 67, 68, and 70 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,132,786 to Poulos et al. (“Poulos”). The Examiner asserts that Poulos discloses non-aseptically packaged cooked cookie having a water activity of 0.6 – 0.8. Applicant respectfully asserts that Poulos does not disclose the claimed subject matter.

In particular, Poulos only discloses food products having a moisture content from 16% to 24%. See Poulos, Col. 9, lines 35 and 64. Poulos does not disclose any food products having a moisture content of at least 38.25. In fact, Poulos does not directly discuss preferred moisture content levels at any point.

For that reason, Claims 1, 4 – 8, 10, 15 – 18, 20, 21, 23, 48, 51 – 55, 57, 62 – 65, 67, 68, and 70 are patentable over Poulos.

## **II. Rejections Under 35 U.S.C. §103(a)**

Claims 2, 3, 19, 49, 50, and 66 stand rejected under 35 U.S.C. §103(a) as being unpatentable over West in view of U.S. Patent No. 6,436,891 to Kemp et al. (“Kemp”). The Examiner asserts that West teaches the preservation of extruded pretzel dough but does not teach specific claimed acidic compositions. It is asserted that Kemp teaches these chemical preservatives. Applicant respectfully asserts that neither West, nor Kemp, nor West in view of Kemp, teaches or suggests the claimed subject matter in such a way as to render it obvious.

As discussed above, West does not teach or suggest shelf-stable food products having a moisture content of at least 38.25. In fact, West teaches away from moisture contents this high because West suggests that lowering the water content is a “hurdle strategy” that will help improve the appearance, texture, and taste of the pretzel dough. See West, Col. 4, lines 47 – 48 and Col. 3, lines 36 – 44. Kemp does not disclose shelf-stable dough products having any particular water content, so Kemp cannot be relied upon to provide this missing element. Thus, West in view of Kemp does not teach or suggest shelf-stable food products having a moisture content of at least 38.25 and utilizing the claimed acidulents.

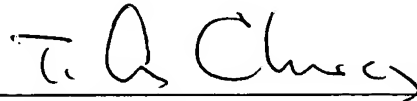
For these reasons, Claims 2, 3, 19, 49, 50, and 66 are patentable over West in view of Kemp.

## **III. Conclusion**

Applicants respectfully submit that, in light of the foregoing comments, Claims 1 – 24 and 48 – 71 are in condition for allowance. A Notice of Allowance is therefore requested.

If the Examiner has any other matters which pertain to this Application, the Examiner is encouraged to contact the undersigned to resolve these matters by Examiner's Amendment where possible.

Respectfully submitted,



---

T. Ling Chwang  
Reg. No. 33,590  
Jackson Walker L.L.P.  
2435 North Central Expressway, Suite 600  
Richardson, Texas 75080  
Tel: (972) 744-2919  
Fax: (972) 744-2909

Date

